Supreme Court, U.S.
FILED

(3)

051494 MAY 9 - 2006

No: 06-1313

OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

PEPI SCHAFLER (SUMMER)

Petitioner

v

HSBC BANK USA, (MARINE MIDLAND BANK)

M & T TRUST CO BANK

Respondents

Petition for a Writ of Certiorari
to the New York Court of Appeals

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Pepi Schaffler, BA, MSSS, JD PhD
Petitioner
642 Preakness Drive
Walnut Creek, California 94596
Telephone: 925-938-8743

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STATE OF NEW YORK
COURT OF APPEALS

Decision February 14, 2006

Mo No: 1313
Pepi Schafler (Summer }
Appellant
v
HSBC Bank USA et al
Respondents

Motion for leave to appeal denied.

Signed, Stuart Cohen, Clerk of the Court

COURT OF APPEALS
STATE OF NEW YORK

Pepi Schafler (Summer) — Erie County
Plaintiff-Appellant-Crossappellant — Supreme Court
v — Index : H-94139/87
HSBC USA (Marine Midland bank)
Manufacturers and Traders Trust Co
Defendants-Appellants-Respondents

Notice of Motion
Motion for leave to Appeal to this Court,
pursuant to CPLR # 5602(a)
Jurisdiction

This Court has jurisdiction in this matter as it is from a final decision by the Appellate Division Fourth Dept. dated November 10, 2005. AS the highest Court in the State this Court also has jurisdiction to review all proceedings de novo.

Dated: November 25, 2005
Signed: Pepi Schafler, BA, MSSS, JD, PhD

Questions presented for review:
1. Did Pepi Schafler have $95.200 of her personal funds stolen on Nov 8. 1985 , by prearrangement in a money laundering racketeering conspiracy scheme of uncommon deceit , that included a former spouse Donald Summer , fiduciary institutions M&T bank , Marine Midland bank now HSBC USA bank, and facilitated by their counsel the primary malfeasant ,an uncommon serial perjurer and crook, Mr. Scott Miller Esq. who for about 18 years of representation was the pivot of this racketeering scheme , who brazenly deceived the lower courts, at least six judges ,lied and swindled his way through four appeals .NY State has no tolling statute for Mr. Miller Esq's crimes , consequently remedies can only be civil, therefore is Plaintiff-Appellant-Petitioner entitled to restitution of the stolen $95.200, compounded interest, $65.000 in legal costs paid to seven lawyers and law firms , Petitioner's travel expense for seven roundtrips from Northern California to Buffalo NY, and punitive damages for depriving Petitioner of he funds for 20 years when theses funds were needed ?

2. Is the decision by the Appellate Division of November 10, 2005 dismissing Petitioner's claim anything other than, biased, frivolous heedless , judicially erroneous and escapist?
3. Is the matter at instant on point with *Mauridian* ,differing only by the criminal conduct involved?

Statement of the case.

To avoid wasteful redundancy, Petitioner is totally omitting these pages, as they are included in the Petition for Certiorari.

Argument

The issues in the instant matter is 100% on point with the issues decided by this court in *Mauridian v Astoria Sav &Loan , 689 N.E.2nd 1385 (NY 1987)* in which this Court held that under the UCC. 3-419 strict liability rule , requires full restitution of a converted instrument. The only difference in the instant matter and Mauradian is that the uncommon depraved mendacity by MM bank now HSBC USA and their counsel Mr. Scott Miller Esq who has deceived and exploited everyone he could and played theater with the facts, the law and the courts and did so for 18 years.

All the previous judicial decisions including the Appellate ones have granted Petitioner Summary judgment holding Marine Midland liable.to Petitioner-Plaintiff. Recently and unexpectedly Petitioner has encountered and been overrun by a local culture of bias and favoritism , disrespecting her standing and violating her rights to due process and equal protection. HSBC USA and Phillips Lytle rule.The lower court Justice NeMoyer for decades a political figure , who recently made it to the court with strong ties to the Respondents knew nothing about the case ,relying on the Respondent HSBC USA counsel to tell him what he needs to know so he can be on their side. he was. His biased conduct was manifest and evident. He was asked by Petitioner to recuse, but counsel for HSBC asked him to stay. So he stayed. Petitioner believes that this dismissal was punitive to punish her for calling this degenerate liar, counsel for Marine Midland -now HSBC, Mr. Miller Esq, a crook and liar, both of which he is. It appears that the court was not angry at him being one, just that Petitioner spoke of him being one. Petitioner hereby asks this Court for permission to Appeal, and therefore there will be de novo review.

Signed , Dr. Pepi Schafler.

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division Fourth Judicial Department

Pepi Schafler (Summer)
Plaintiff-Respondent — Order CA 05-00463
v — 05-00464
HSBC Bank USA (Marine Midland) — 05-00465
M&T Bank
Defendant -Appellant

(1) Appeal from judgment dated June 24, 2004 granting plaintiff summary judgment is hereby dismissed.

(2) Appeal from a judgment dated July 12, 2004 awarding plaintiff $239.273 against defendants is hereby dismissed

(3) Appeal from an amended judgment dated August 14, 2004 awarding plaintiff $127.635 against defendants is hereby dismissed. HSBC is entitled to judgment because plaintiff has been fully compensated for the $47.600 withdrawn by the former spouse from their account. *

November 10 , 2005 — Signed JoAnn Wahl
Clerk of the Court

* This is an incredibly bizarre decision , explained only by tawdry and sordid bias., and since this perjury and lie by HSBC Bank USA would give them an excuse no matter how bizarre and false after 20 years, they will be "of the hook" so to speak, by having ruled in favor of the hometown icons, even if they are dirty icons. The funds removed were $95.600 there has been no evidence , and there is none in the record that anyone other than petitioner owned the funds in that account. The Court made up the idea that the stolen money came out of a joint account, and in fact they never said so before. This is part of the gift to HSBC bank. In the serial perjury by Marine Midland and their counsel Mr.Miller Esq. had once stated to the same court that the stolen funds were in repose in accounts that were distributed in the marital dissolution were divided 50./50 therefore in the appellate decision dated May 31, 1996 this same court pp Appendix held that petitioner is entitled to 50%.But as it is now known the funds were laundered in the accounts, and were no longer there when the marital distribution took place eight years later .In this very skimpy, inadequate dismissal by the court, which reeks bias and favoritism the court did not touch on 20 years of litigation, on all the appeals this court had adjudicated during that time .Suddenly a new defense -more illogical bias.

STATE OF NEW YORK
SUPREME COURT, COUNTY OF ERIE

Pepi Schafler (Summer)
Plaintiff Index No" H-94139/87

v

HSBC Bank USA (Marine Midland)
M &T Bank Defendants
----------/ NOTICES OF APPEAL

Appeals filed by Petitioner:
July 7, 2005 Plaintiff -Petitioner is appealing the summary judgment order awarding Petitioner only 50% of the stolen funds, as that twisted decision was based on the serial perjury and pathological lies by Marine Midland, HSBC USA and counsel Mr. Miller Esq,
August 4, 2005 Plaintiff -Petitioner Cross Appeals
August 11, 2005 Amendment to cross appeal
August 20, 2005 Supplemental notice of appeal.

All of these were dismissed by letter.

Signed by the Clerk of the Court
JoAnn M. Wahl

State of New York
Supreme Court: County of Erie — Patrick H. NeMoyer J.S.C. Presiding

Pepi Schafler (Summer)
Plaintiff — Index No: 94139/87

v

HSBC Bank USA (Marine Midland)
Manufacturers and traders Trust Co — ORDER
Defendants

Plaintiff having moved for summary judgment , in amount for $47.600 is hereby granted with statutory interest dating to November 8, 1985.HSBC 's cross motion to deny plaintiff's request for full compensatory damages, punitive damages , legal fees and costs , and any amount over $47.600 and other relief is denied.*

June 22, 2004 — Signed, Patrick NeMoyer JSC.

July 12, 2004 — Judgment

On July 12, Plaintiff-Petitioner entered a judgment in her favor against HSBC Bank USA in amount of $47.600 plus compounded interest in amount of $191.673. for a total of $239. 273

Judgment signed and entered by Erie County Clerk

August 16, 2004 — Amended Judgment

HSBC appealed the compounded interest on the judgment and Judge NeMoyer reversed it at once , entering the 9% statutory interest on the judgment , amounting to $80.035.26 which brought the total judgment to $127.635.26

Signed , Patricjk H. NeMoyer J.S.C.

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*Judge NeMoyer knew clearly of all the sordid frauds perpetrated by MM bank now HSBC bank , and counsel Mr. Miller Esq,. and that each decision in this matter was based on this tawdry serial perjury and deceit by the above named perpetrators, but he acted as if it was all valid, real , genuine and true.

Petitioner-Plaintiff's Motion for Summary Judgment
Dated October 10, 2003*
Supreme Ct. of the State of New York, County of Erie
Justice Patrick NeMoyer Presiding

Pepi Schafler , Plaintiff — Index No: H -94139/87
v — Hearing Nov 14 * 2003
HSBC USA formerly MM bank — 11 a.m.
and M&T bank , Defendants

Motion for Summary Judgment,

Plaintiff Pepi Schafler hereby moves this Court for summary judgment in the above identified matter on her claim for larceny and conversion in amount of $95.200 (ninety five thousand and two hundred dollars) plus interest for the past 18 years since this malfeasance , misconduct , conspiracy and theft occurred in amount of $205.632 , as there are no other issues to be decided, except the scheduling of a jury trial to determine the punitive damages originally set at $250.000, ~~but~~ are now after 18 years to be amended to be calculated pursuant to the CPI (Consumer price index)). Since there are no other issues to be decided , Plaintiff asks this Court to order Defendants to finally and promptly to compensate Plaintiff for depriving her of her money for 18, years and the attendant damages. (In rereading the Plaintiff -Petitioner had neglected to request in this motion restitution for all the legal costs as included in the complaint Since it had become evident that Judge NeMoyer knew nothing about the case ,had not familiarized himself with the extensive files , relying instead on Defendants to tell him what they wanted him to know., this summary judgment motion contains 27 paragraphs . It was also amended on November 1,2003

* This motion for summary judgment, the amended motion and the scheduled hearing all took place before the December 26, 2003 shocking discovery that all the representation throughout those 18 years -now 20 years were fraud and serial perjury, because the embezzled checks were laundered at MM bank: deposited on November 8 1985, and the funds removed on November 25. 1985. Everything else marine or HSBC had to say, were lies, fraud and perverted

The evidence in this matter is strong , simple and direct. The law is clear and persuasive. What needed explaining is the extra ordinary vile criminality , judicial exploitation and kabuki theater by Marine Midland now HSBC USA and counsel Mr. Scott Miller Esq. who is a depraved , despicable pathological liar. Some paragraphs.

(1) On November 7, 1985, Plaintiff was the victim of a conspiracy to steal and convert $ 95.200 dollars which theft and conspiracy was facilitated by Defendant Respondent MM bank now HSBC .

(2) These stolen funds were in two checks in amount of $16.000 and $79.200 which were removed from Merrill Lynch ,deposited at Marine Midland, and paid by M&T bank all without Plaintiff's endorsement. .

(3) Defendants violated their fiduciary duties to Plaintiff.

(4) Defendants were involved in various transactions with the thief , and therefore they suborned the theft of Plaintiff's funds.

(5) Defendants refused all requests and attempt at persuasion to have them return to the account they were stolen from, to allow others to decide the rightful ownership of the funds.

(6) Because Defendants are such accomplished liars, they have distorted the facts, and exploited the judicial system that considers attorneys honorable and truthful- Defendants are not, all to the detriment of Plaintiff-Petitioner.

(7) This serial perjury and criminal misconduct by Defendant - MarineMidland-HSBC USA and Mr. Miller Esq.have caused great harm to Plaintiff -Petitioner.

(8) Counsel for Marine now HSBC , Mr Scott Miller Esq. used to taunt Petitioner's attorneys by saying:" I can do things that you can not ". We assumed that this was about legal fees, because Mr. Miller was a salaried employee at Marine Midland, which he continues to be at HSBC bank USA; wrong assumption. He is able to lie, cheat, commit serial perjury, and act like a common criminal because he is employed by one of Buffalo's iconic institutions.

In the last paragraph plaintiff petitioner repeated her request for the return of her funds , damages and interest

STATE OF NEW YORK: SUPREME COURT
County of Erie
Pepi Schafler Index No: H-94139
Plaintiff
v NOTICE OF MOTION
HSBC Bank USA,
(Formerly Marine Midland bank) Jan 7.2005
and Manufacturers and Traders Trust Co
Defendants.

Motion for the Recusal of Justice Patrick NeMoyer
due to Bias and Favoritism

Plaintiff Pepi Schafler hereby asks this Court to recuse from the above identified matter , thus enabling the Chief Administrative Judge to reassign this case. Hopefully the reassignment will be to someone that does not favor the "twin towers" , the icons of the City of Buffalo : the HSBC USA, and M&T banks.

While the issues are currently on appeal , someone will prevail,and there will be additional activity , which after a trip to the Court of Appeals , will indicate that after 20 years this matter is finally over. This Court has been personally courteous and gracious to this Plaintiff. Legally the Court has been biased, disrespectful of Plaintiff's claim, of Plaintiff's rights , of Plaintiff.s standing, and this has been harmful. This Court has violated .Plaintiff's Constitutional rights to due process and equal protection. It is hoped that the Appellate Division 4th Dept. will address these inequities.

Statement of facts.

(1) Def. HSBC always prevailed in all matters significant or otherwise Plaintiff's objections were ignored. (2) This Court has made no secret that whatever position "de jour "HSBC adopted , it was meritorious and adopted by the Court. (3) At least twice Plaintiff traveled 7.000 miles to Buffalo NY , with all that this kind of travel entails, time, wear and tear on the body, and the costs , just to hear HSBC say that they need an adjournment because they do not yet have a defense. Plaintiff's objection was ignored. (4) It certainly was appropriate for the Court to let the Defendants know that whatever defense they planned to use when petitioner's funds were embezzled , and laundered 20 years ago , is still the only one they have.

(5) Instead, when counsel for HSBC wanted to examine appellate records which were none of their business, this Court said, sure, go look. Plaintiff objected but was ignored. (6) When counsel for HSBC did not find a defense , then they turned to the trial record of the divorce Again none of their business, but this Court said : sure go look. Plaintiff objected but was ignored. all over these records it is stamped "Confidential" but this does not apply to HSBC in Buffalo NY. (7) Well counsel for HSBC decided to look for a defense , demanding information from Plaintiff's divorce counsel, Nelson Zakia, despite the fact that he had provided a 5 page affidavit to the Appellate Div.4th Dept , in 1995 that he had no knowledge of anything in this matter , by order of the court. This Court said : sure go there . Plaintiff's objection was ignored.(8) Finally for the May 2004 hearing on the summary judgment motion HSBC had a "defense" Lies and perjury. (9-10) What HSBC had come up with is that before all the facts of the theft and money laundering by Marine Midland was known , she had used her power of attorney to withdraw marital funds, for marital expenses. These accounts were part of as part of the marital estate and Plaintiff had a right to it The HSBC "defense" had been discredited almost 20 years ago. (11-12) and they were actually estopped from bringing it up. But they respect no laws, no rights, no procedure. This Court said "I agree with your position , that she is not entitled to anything, she engaged in self help, but the Appellate Div. ordered otherwise. But you should appeal because she is going to appeal. " Plaintiff has a name, and many titles, and it was dismissive of the Court to describe Plaintiff who was standing right there as "she" The "self help" comment was an insult, and Plaintiff had objected to it immediately This incident underscores the bias and misconduct. (13) In law school Plaintiff was taught that judges are not permitted to provide legal advise. (14-15) This Court has denied this Plaintiff the right to discovery, the right to damages, the right to legal fees and any other lawful request made. It is hard to imagine a case were the above noted relief is more appropriate the matter at instant. (16-17) Since December 26, 2003 along with Plaintiff this Court has become aware that for the past 20 years, Mr. Scott Miller Esq. and Ms. Tracy Woodrow. Esq and Phillips Lytle have carried forth the legal positions of Marine Midland bank, now H SBC bank through 20 years of fraud,

the most egregious misconduct ,perjury , lies .money laundering . This Court has a duty to act on such misconduct, and represent the interest of the public.(18-19) This is not misconduct and criminality by someone in a dark alley, but rather these are attorneys albeit sleazy ones, Mr. Miller Esq. is seriously impaired either by mental illness, or substance abuse, and this Court is suborning it . They are most certainly for employment in a federally chartered fiduciary institution. Nothing has given Plaintiff reason to believe that such brazen deceitful and criminal misconduct that is routinely accepted from. the Defendants would be tolerated .from her.
(20) When Plaintiff compounded her judgment interest calculation , it was akin to an earth quake . Everybody in Buffalo that could - weighed in on the subject , not because they cared about it, but contradicting the wishes of the court's favorites is just not done.

The State of NY does not have a neat and simple rule for recusal such as Title 28 Sec. 455 of the Federal Rules.The ABA model Code of Judicial Conduct is applicable: Canon 3 ,B (5) " A judge shall perform judicial duties without bias or prejudice .A judge shall not , in the performance of judicial duties , by words or conduct manifest bias or prejudice. A judge who manifests bias impairs the fairness of the proceeding and brings the judiciary into disrepute Canon 3, E holds: 1) A judge shall disqualify himself in a proceeding in which his impartiality might be questioned , when the judge has a personal bias concerning a party(personal interest) counts. This Court's bias and prejudice is visible , obvious and palpable, and that has serious consequences HSBC relies on the Courts bias. A few statements under oath by Ms. Woodrow , that were false and perjured ,and Plaintiff pointed them out. They prevailed anyway. For all these many reasons *, and many others Plaintiff Pepi Schafler hereby asks Judge Patrick NeMoyer to recuse himself from this matter.

Signed, Dr, Pepi Schafler

Counsel for HSBC ,asked Judge NeMoyer not to recuse, so he did not.

*Plaintiff's confidential records that Judge NeMoyer allowed Defendant HSBC to access were simply transferred still stamped confidential and called the record on appeal .and passed around. This was an outrageous impermissible violation of Plaintiff's right to privacy, and Plaintiff will hold them accountable. Judge NeMoyer's bias is not a victimless crime. *Falsus in uno, falsus in omnibus.*

MERRILL, LYNCH, PIERCE
FENNER & SMITH, INC.
ONE M & T PLAZA, 11TH FLOOR
BUFFALO, NY 14203

816-26590

11350

November 7 19 85 10-4/220

PAY TO THE ORDER OF Donald L Summer and Pepi S Summer $ 79,200.00***

the sum of $79200 and 00cts DOLLARS

M&T Bank
One M&T Plaza Office, Buffalo, New York 14240

MERRILL, LYNCH, PIERCE
FENNER & SMITH, INC.

BY

Q/A

⑈011350⑈ ⑆022000046⑆ 692-966 ⑈ ⑈00079200⑈

022000020 756209013 NOV-8-85

NO 85 12 PM

PAY ANY BANK, N.A.
CHASE MANHATTAN BANK, N.A.
PAY ANY BANK 30-2

NO 85 08

MARINE MIDLAND BANK N.A.
Statement of account with Statler Office

Account number: 756-20901-3

Donald L Summer
Attorney at Law
Trust Account
Suite 1300 Statler Towers
Buffalo NY, 14202

Summary of activity for the period: 11/05/1985 to 12/03/1985

Date :	Description of Transaction	Deposits	Subtractions
11/08/85	Deposit	79.200	
11/25/85	Withdrawal check		79.200

The money laundering. The criminal serial perjury, the lies, the tawdry , sordid ,despicable and shameful conduct by Respondents.

MERRILL, LYNCH, PIERCE
FENNER & SMITH, INC.
ONE M & T PLAZA, 11TH FLOOR
BUFFALO, NY 14203

816-26590

11350

November 7 19 85 10-4/220

PAY TO THE ORDER OF Donald L Summer and Pepi S Summer $ 79,200.00***

the sum of $79200and00cts DOLLARS

M&T Bank
ONE M&T PLAZA OFFICE, BUFFALO, NEW YORK 14240

MERRILL, LYNCH, PIERCE
FENNER & SMITH, INC.

BY

BY

O/A

⑈011350⑈ ⑆022000046⑆ 692-966 ⑈ ⑈00079200⑈

NO 35 12 PAY ANY BANK
EAST, 4TH TAMPERS
FIRST ROMPAY
BUFFALO, N.Y.
PAY ANY BANK

PAY ANY BANK, P.M.
CHASE MANHATTAN BANK, N.A.
NEW YORK 10-3

NO 35 08

NOV 8-85

022000020

MARINE MIDLAND BANK, NA
Statement of account with Statler Office

Account number:756-213339

Donald L. Summer-Attorney at Law
Suite 1300 Statler Building
Niagara Square
Buffalo NY, 14202

Summary of activity for the period 10/25/85 to 11/26/85

Date:	Transaction	Deposit	Subtraction
11/08/85	Deposit	16.000	
11/25./85	Withdrawal		16.000

Part two of the money laundering.

HSBC USA 's response to demand for document production
Date : December 22, 2003

State of New York Supreme Court, County of Erie
Pepi Schafler
Plaintiff
v Index H-94139
HSBC bank USA
Manufactiureres & Traders Trust Co.
Defendants

Defendant HSBC's response to Plaintiff's demand
for the production of document s pursuant to NY CPLR 3120

" HSBC states that responsive documents from the relevant time period are attached as exhibit B'the bank statements that indicate that Petitioner's stolen funds were laundered at Marine Midland. Deposited with a forged signature and removed a few days later.

Signed Phillips Lytle et al attorneys for HSBC
by Tracy Sendor Woodrow
One HSBC CEnter, Buffalo NY, 14203

After 18 years of more lies, more serial perjury, more degenerate misconduct finally the evidence denied for a long time: everything that Respondents had said, pleaded sworn to were brazen lies. 18 years of terroristic lies and exploitation of the judicial system and harassing Petitioner.

MERRILL LYNCH
CMA Cash Management Account
Monthly Statement

Account Number 816-26590

Mrs. Pepi S. Summer Phd
Mr. Donald L. Summer
121 Deer Run
Williamsville NY, 14221-1821

Statement Period 10/.26/ 85 to 11/29/85

Your Account Statement As of 10/.26/85:

Cash and securities $116.159.65
Income for the year to date Approx. $8.000

Your Account Statement as of 11/29/85

Cash & Securities .$12.684

While Petitioner did not find out until mid January 1986 of this embezzlement and theft, because the December 1985 statement was stolen, this did not matter much , because despite 18 year of deceit by the Respondents -these depraved degenerate liars, as Petitioner learned on December 26, 2003 the forged checks were laundered at Respondent bank within days of the embezzlement and theft., were converted and removed for parts unknown.
The remainder assets in the account were blocked by two different legal proceedings and two different courts Since the divorce trial and counsel were enjoined by the court not to address, adjudicate or even mention the pending claim against the banks, and the JHO deciding the divorce had a mandate to decide all the issues between the parties, and did not know of the bank claim, he therefore included this remainder in the blocked account in the marital estate as of March 17, 1993. At that point the account had grown to $50.000.

GOLDOME BANK
Certificate of Deposit
Date purchased 10/9/84 maturity date 10/9/85
Renewed to 10/10/ 86/
Account Title and owner Pepi Summer
Initial Deposit amount : $101.127 .10 cts

In addition to creating the conspiracy to steal petitioners funds from Merrill Lynch and launder them at Marine Midland bank Summer attempted to steal petitioner's funds at another bank that was honorable like a bank should be and not dirty crooks like Marine Midland. bank

Letter from Goldome Bank Legal Department

November 22, 1985
To Donald Summer
Suite 1300 , Statler Towers
Buffalo NY 14202

Dear Mr. Summer
Please be advised that the only person authorized to make withdrawals in this account since it was opened in October 1984 is, has been and continues to be Mrs Pepi Summer.
For the period from October 9, 1985 through October 16 1985 due an innocent misunderstanding by an employee of the bank your name was added to the account . During that time however you would not have been able to order withdrawals from this account, because the bank had not, and has not been given the signed documents necessary to give you that authority.

Signed , James R. Peterson, Legal Department.

POWER OF ATTORNEY

To Pepi Summer
121 Deer Run
Williamsville NY. 14221

Acount # 756-213329

dated 12.20 1984 Signed: Donald Summer,
Pepi Summer

Account # 756-7655838
(joint credit card account)

dated 12.20, 1984 Signed Donald Summer
Pepi Summer

These accounts held marital funds, and D. Summer never claimed otherwise, but he obfuscated the truth by speaking "my accounts" "accounts in my name". Petitioner has the the tax return to effectively prove things, and furthermore he was expelled from the law firm where he was an owner-partner for appropriating legal fees and defrauding the partnership. They knew what his personal-outside the marriage assets were and would be ready as witnesses

HARRIS BEACH , WILCOX et al,
Attorneys and Counselors at law
The Granite Bldg.
Rochester NY, 14604 November 25, 1986

Mr. Thomas W. Taylor , Deputy Comptroller District Office
Office of Comptroller of the Currency
1211 Avenue of the Americas
New York, NY 10036

Re: Marine Midland Bank's Failure to
Respect a Valid Power of Attorney.

Dear Mr. Taylor:

Marine Midland Bank N.A is a national bank organized under the laws of the US and chartered by the Comptroller of currency. This letter is to serve as an official complaint against the office of MM.bank with it's headquarters in Buffalo NY, for it's failure to provide our client with records requested under a power of attorney.

Although somewhat complex this is a summary: my client's husband maintains accounts at MM bank, specifically at the office in the Statler Building, and as a result of that he has a number of personal relationships with the employees in that branch.

In early to mid-November 1985, our client, Dr. Pepi Summer pursuant to her valid power of attorney approached Ms.Kennedy an employee of MM bank in the Statler office and requested the bank records for that account. The request was not honored, in fact Ms. Kennedy discouraged this inquiry and making excuses such as : "it will take time, the holidays, cost money etc." She as well as other employees of MM bank completely disregarded their duty to provide these documents. In mid-January 1986 ,Dr.Summer contacted a Ms. Murie in the Customer Serv. Dept who was stunned at this lack of service, promised that she would immediately contact Ms.Maxine Walter an Asst Vice Pres. asked our client provide a $250 as prepayment for the records which she did , and she was assured that the records would be ready in a few days. Well more excuses and they were never provided. * This is a gross violation of MM bank's fiduciary duties, and you are requested to investigate.

Signed David Boysen , Esq., cc: Mr. Charles Mitchow Pres. MM.

* MM bank was covering up the theft, conversion and laundering of petitioner's stolen funds. This conduct is appropriate for organized crime, nos a fiduciary instituion. In this instance there might not be a difference.

THE LEGAL FIELD IN THE ORDER OF SERVICE

Because this matter spans more than twenty years listing the name of attorneys and law firms, judges and courts might be helpful..

For petitioner attorneys and law firms :
Brian Barney, Pauley and Barney , Rochester New York
David Boysen, Harris Beach , Wilcox et al Rochester NY,
Tom D'Agostino, Mattar D'Agostino, Buffalo NY.
Brendan Burke, McGee & Gelman, Buffalo NY
Carl Kustell, Kustell Assoc. Buffalo , NY
Gerald Beckkerman, Beckerman & Beckerman, Rochetser NY
Michael Selter, Farkas & Manelli , Washington D.C.
Stafford Ritchie, Buffalo, NY

New York State Supreme Court Justices ;
Justice Joseph Forma
Justice George Francis
Justice Robert Whalen
Justice Norman Joslin
Federal Senior Judge John Elfin
Justice Patrick NeMoyer

All the four appeals have been filed in the Appellate Division of New York State Supreme Court , Fourth judicial Dept. located in Rochester NY.

Respondent M&T is represented by a law firm
Hodgson Russ et.al in Buffalo NY, Ms Cheryl Storie
of that firm, and now Mr. Stephen Yonaty

Respondent Marine Midland now HSBC was represented by house counsel Mr. Scott Miller, who is now general counsel at HSBC, and they are now being represented by Mr. Michael Powers and Ms. Tracy Woodrow from a law firm Phillips , Lytle et al.

PAULEY AND BARNEY
attorneys at law
215 Times Building
Rochester NY, 14614

January 23, 1986

Marine Midland Bank N.A.
Statler Towers
Buffalo NY, 14202

Merrill ,Lynch, Pierce et al
One M & T Plaza
Buffalo NY, 14203

M & T Bank
One M & T Plaza
Buffalo NY, 14203

Dear Sir or Madam:

This is to notify you that I am the attorney for Pepi Summer 121 Deer Run, Williamsville NY, 14221. My client on reviewing the December 1985 statement from Merrill , Lynch et al discovered withdrawals from an account in which she has a primary interest in the amount of $95.200. Upon further inquiry she discovered that Merrill Lynch had issued two checks numbered 11349 and 11350 on November 7, 1985 on it's account with M &T bank payable to the order of Donald L. Summer and Pepi S Summer , such being in the sum of 16.000 and $79.200 respectively. Thereafter the aforementioned checks were endorsed by Donald L Summer for deposit only into an account in his name only at Marine Midland bank Pepi Summer's signature appears nowhere on the endorsement. Despite this fact the checks were negotiated.

Since the negotiation was affected without any negligent act or omission on the part of Pepi S. Summer , I request that you immediately recredit the Merrill, Lynch et all account of Pepi Summer from which the monies were taken . If you fail to recredit that account as requested , I will advise my client to institute legal action for damages in the amount of Ninety Five Thousand Two Hundred dollars ($95.200).

Signed , Brian Barney.

MEETING WITH MR. JOHN TRASHER VICE PRES. FOR INTERNAL SECURITY . MARINE MIDLAND BANK.

Date January 22, 1986.
Petitioner had met with Mr.John Trasher that day, and each party's history is somewhat different but a lot is the same. Mr. Trasher provided his statement for some internal record kepping system at Marine Midland. This is mostly his statement. though she also has her own. While Petitioner knew that Marine Midland bank was known as a "dirty bank", she really did not know the full meaning and extent of those words in that context. She did not know that they are the most outrageous liars, of their intentional corrupt, sordid money laundering, their gangsterism, their tawdry criminality, in their RICO conspiracy in the present matter Therefore in arranging a meeting with Mr. John Trasher, Petitioner assumed that pointing out the forgery of her checks which could have been by error , was sufficient and it would be promptly corrected, as it would in most honorable banks. Mr.. Trasher said : "look we do this all the time, get yourself a lawyer. "(he did not put this statement in his debriefing history sheet.) Petitioner told him she had a lawyer, but she could not understand as to how he can look at a crime and babble on about something else. He could, and he did.* That day petitioner's lawyer contacted Marine Midland bank. (App)

* Mr . John Trasher had subsequently proven to be an extraordinary liar, perjurer and all around miscreant. All the serial perjured documents and statements generated by Mr. Miller Esq. as counsel for Marine Midland , by law had to also be signed by an officer of the bank. Mr.. Trasher was the designated liar and perjurer.

Summons and Complaint dated June 12, 1987

STATE OF NY, SUPREME COURT, COUNTY OF ERIE

Pepi Summer , Plaintiff
121 Deer Run
Amherst NY, 14221
v
Marine Midland Bank, NA, Defendant ,
One Marine Midland Plaza
Buffalo NY, 14203
and
Manufacturers and Traders Trust Co., Defendant
One M&T Plaza
Buffalo, NY 14203
and
Merrill Lynch , Pierce, Fenner Smith Defendant
1100 M& T Plaza
Buffalo NY, 14203

Summons

You are hereby summoned to answer the complaint in this action within 20 days, or 30 days if service is not within the State of New York.

Attorneys for Plaintiff Mattar, DAgostino, Kogler & Runfola

Complaint

The Plaintiff herein by her attorneys Mattar, D'Agostino, Kogler and Runfola for her complaint against the Defendants herein , respectfully states and alleges:
Paragraphs 1-4 establish the identity of the parties
Pragraph 5: Prior to November 7, 1985 the Plaintiff maintained and held a Cash Manag. Acct in her name and the name of Donald Summer
Paragraph 6: Prior to November 7 , 1985, Plaintiff from time to time would forward to Merrill Lynch various sums of her money to deposit in her account,
Paragraph 7: Def Merrill Lynch maintained the acct at Def. M&T

Paragraph: 8: Prior to Nov. 7, 1985 the acct balance was over $95.200
Paragraph 9:Noting that all of Pl. 's funds placed with or forwarded to Def. Merrill Lynch, et all remained the property of the Plaintiff and M..L.. were the fiduciary of the Pl. and custodian of the funds.
Paragraph 10: M.L. had agreed to return the funds to Pl on demand..'.
Paragraphs 11 &12 hold the fact that former husband went to M.L. demanded funds from the account, and was given two checks in amount of $16.000 and $79.200for a total of $95.200
Paragraph 13 &14 hold that the checks drawn on Def. M&T bank were made payable to Plaintiff and her husband who endorsed them by signing his name alone and deposited them at Def. M.M.bank.
Paragraphs 15-17: The act by husband was without Pl.'s knowledge , consent or acquiescence, were honored by Def. M&T ignoring the order of Merrill Lynch and Pl. has not received any of the funds represented by the two checks

First cause of action

Paragraphs 18 -22.: Pl . realleges par. 1-17. and further states that the actions by Def.. Marine in accepting and converting these checks, they acted contrary to law, and so is their refusal to return the fund.to Pl. who has suffered damages in amount of $95.200

Second cause of action

Paragraphs 22-25: Plaintiff realleges par. 1-21, and states that M&T acted contrary to law and has refused to return Pl.'s $95.200, therefore Pl. is damaged by M&T bank in amount of $95.2000.

Third cause of action

Par: 26-27 Pl. realleges 1-25, M.L. has violated the fiduciary duty to Pl and refused to return $95.200
Par. 28: MM and M&T were grossly negligent and reckless
Par29-30 The actions of all the Def, in refusing to return Pl's monies to her was and is deliberate, unlawful, malicious .all designed to frustrate Plaintiff's rights.
Wherefore, Plaintiff's prays for a judgment of $95.200 against the Defendants, punitive damages in the amount of $250.000,plus attorneys fees and the costs of this action.

Signed , Thomas D'Agostino
Mattar D'Agostino, Kogler & Runfola
17 Court Street, Suite 600
Buffalo NY, 14202

SUPREME COURT, STATE OF NEW YORK,
COUNTY OF ERIE
By: Marine Midland
Verified answer with cross claim dated July 7, 1987
Pepi Summer , Plaintiff
against: Marine Midland bank, NA
Manufacturers and Traders Trust Co.
Merrill Lynch et al , Defendants

While all the irrelevant nonsense and lies put forth by MM do not merit further attention, other than the perjury and lies to the court. and because it is under oath, the lies by these derelicts have long term effects and consequences.
1. Second affirmative defense: Plaintiff is not suing Donald Summer, therefore they are not liable Wrong, wrong,
2. Third Affirmative defense: that plaintiff Petitioner has written a check in amount of $22.000 to herself on January 13, 1986 * with her power of attorney , after the deposit therefore she has been compensated. Wrong .Wrong, a lie and perjury
3. Fourth Affirmative defense, that on January 13, 1986 that Plaintiff had written a $10.000 on a marital account therefore she has received the funds she is suing for. Lies**
4. Fifth Affirmative defense.: that the check in amount of $79.200 was deposited in D. Summer's Attorney trust Acct. and that he continues to hold the proceeds of that check in his attorney trust account pursuant to his fiduciary duties***
The rest is all meaningless trash, lies more perjury.

Signed , Scott Miller Esq.
Affirmed,: signed John R. Trasher
This is followed by a short affidavit from the designated under oath disgusting liar and perjurer Mr. John R.Trasher who is a bank officer. The Mr. John Trasher who told Petitioner more than one year before that Marine Midland embezzles , converts and launders money all the time, who because Marine Midland is bank , a bank officer has to swear to the veracity of what is asserted , and he is a bank officer, and a liar, so his job is to swear the lies and serial perjury
* ** *** continued on the next page.

July 16, 1987
Manufacturers & Trades Trust Co.Response and Crossclaim
The first affirmative defense:
1. Plaintiff has no interest in or right to some or all of the proceeds of the embezzled checks..
This is followed by a few more ridiculous defenses like that, that do not merit being mentioned and they cross claimed against Marine Midland bank.
July 16.1987
Merrill, Lynch, Pierce , Fenner & Smith Inc.
Their response was essentially that they have done nothing wrong.
July 22. 1987
Third Party Verified Complaint
While the whole document is standard Marine Midland fraud and deceit there are a couple of things that indicate collusion by Marine Midland with Donald Summer in this theft.
Parr. 7 . Donald Summer warranted to them , that he has good title the deposit is rightful. and with the consent of the Plaintiff.
Par.8-9 Marine had credited D. Summer's attorney trust account with the sum of $79.200 which and another with $16.000 which he continues to hold in his fiduciary capacity

Signed : Scott Miller Esq.

Signed and affirmed John R,Trasher in an affidavit that he is asserting the truthfulness of the document, and he is signing because he is an officer of the bank and a liar and perjurer

*from the previous page: this check was written on a marital account to which she had an absolute right, after the deposit ,before Plaintiff knew of the theft and 18 years before she knew of the money laundering. Marine's lies, sordid degenerates swindles by which they also exploited the judicial system about these stolen monies and it's laundering was unknown to others until 18 years later. They used some of these lies in the current appeal.
** More lies. These were marital funds duly belonging to petitioner and her spouse and she had a right to them. this right was never challenged.
*** This lie and perjury is pathetic and degenerate . Mr. Miller counsel for Marine is saying that a stolen, forged personal check embezzled and stolen by an attorney belongs in an attorney trust account as his "fiduciary duty " How corrupt and tawdry is that, especially since it is also a brazen lie . This check was laundered at marine midland a few days after deposit. Mr. Miller appears impaired by all his lies , swindles and perjury, he does not know what he is saying, what is right or what is wrong. This lie, was maintained by these crooks for 18 years in various courts, and appeals. HSBC bank USA used another lie from the same source in the most recent appeal.

DECISION AND ORDER BY THE HONORABLE
JOSEPH, S. FORMA
Dated April 1, 1988

Summary of decisions on relevant issues:

Grant Merrill Lynch et al Summary Judgment as there has been no wrongdoing on their part. There is no liability on the part of Merrill Lynch for the conversion of the funds . The cross claim by Marine for indemnification from Merrill Lynch should also be dismissed . Marine is seeking to have their liability to Plaintiff shifted to Merrill Lynch . Marine is demanding a contribution from Merrill for any liability to Plaintiff.
There is reason for any contribution by Merrill to the liability of Marine to Plaintiff. There has been no breach of duty by Merrill.
The action for divorce having been filed on September 1, 1986 was pending in another court before Justice George Francis . While there had been a motion by D.Summer to consolidate this claim with the action for divorce, the court Justice Forma did not order that , but did order that the matter at instant be transferred to Justice Francis as well, to enable him to deal with both matters.

Signed Joseph S Forma
Justice of the Supreme Court.

JUSTICE GEORGE FRANCIS
Special Term Note of Issue
March 6, 1990

Try to settle by having :
(1) Don pay money into JT savings account w/restraint pending resolution EDL issues in course of matrimonial.
(2) Pepi then withdraws actions v banks.

If parties won't settle on this basis , then :
(1) grant Pepi's mtn for partial s/j as to liability only v banks
(2) Grant M7T's cross -mtn for partial s/j v Marine liability only
(3) Grant Marine's cross-mtn for partial s/j v Don Summer (liability only)
Deny Don's mtn for consolidation

Damages to be resolved upon a hearing after EDL issues decided in divorce action.

Hearing March 8.91
All attorneys present: Summer refuses to stipulate to agreement
I told attorneys to submit order as follows ;
Pepi mtn for s/j as to liability v banks granted
M&T cross-mtn for partial S/J v Marine liability only granted
Marine's cros-mtn for partial s/j v D. Summer liability only granted.
Request for damages at trial after EDL issues in div action
Deny DS motion for consolidation.

Reina to submit order. (Pepi Summer).
d.Summer -Vince Tracy
M&T -Doug Edward
Marine-Scott Miller.

Supreme Court of the State of New York
APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

Pepi Summer Respondent -Appellant (Plaintiff)

v

Marine Midland Bank N.A,. and Manufacturers & Traders Trust Company, Appellants-Respondents (Defendants)

The above named MM Bank and M&T bank each having appealed to this Court from certain parts the order of the Supreme Court dated September 16, 1992 , and Pepi Summer having appealed from certain parts of said order , and said appeals having been argued by Scott Miller for MM bank, and Cheryl Storie for M&T bank , and Brendan Burke for Pepi Summer, and due deliberation having been had thereon ,

It is hereby ordered , that the order so appealed from be and the same hereby is unanimously reversed on the law without costs , Plaintiff's motion is granted and Defendant's cross-motions are denied.

Relevant parts of the Memorandum: Supreme Court erred Summary judgment order was timely submitted to Justice George Francis.

Entered : February 5, 1993

Carl M. Darnall Clerk

STATE OF NEW YORK SUPREME COURT
County of Erie
The Hon.. George F. Francis , Justice of the Supreme Court, Presiding

Pepi S. Summer — ORDER

Plaintiff

v — Index No: H-94139

Marine Midland Bank, N.A.
M & T bank ,

Defendants ,

Marine Midland Bank N.A., Defend. & Third party Pl.

v

Donald L.Summer, Third party Def.endant.

The Plaintiff hereby moves for Summary Judgment against the Defendants; and the Defendant Manufacturer & Traders Trust Co having cross moved for Summary Judgment against the Defen, Marine Midland Bank, N.A. ;and the Defendant and third party Plaintiff, Marine midland Bank. N.A. having moved for summary judgment against the third party Defendant ; and the Third -Party Defendant having moved for the consolidation of this action with an action pending in this court , titled Pepi S. Summer v Donald Summer ; and the matter having regularly come on to be heard before me on March 6, 1990 and March 8, 1991

Now upon reading and filing the Plaintiff's Notice of Motion dated January 2, 1990 and the affidavit of Pepi S.Summer sworn to December 15, 1989; the Def. Manufacturers & Traders Trust Co. notice of cross-motion dated Febr. 2, 1990, and the affidavit of D.W. Readett sworn to February 1, 1990, together with the annexed exhibit "A"; the Def. and Third -Party Pl. Marine Midland Bank, N.A.'s notice of motion dated January 30, 1990 and affidavit of John Trasher sworn to January 29, 1990 *, together with exhibits "A" and "B" , sworn to on Jan 29, 1990 . and the affidavit **of Scott Miller sworn to on Jan. 29, 1990 together with annexed exhibits "C" and "D" , the third party Def. Donald L.Summer 's notice of motion dated Febr.22, 1990, together with exhibit "A" annexed thereto and the Affid. of Donald Summer sworn to on Jan30, 30 1990, and after

hearing Mattar,D'Agostino (J.Reina Esq. of counsel); attorneys for Plaintiff, Hodgson , Russ et al attorneys for Def, M & T, Scott D. Miller, Esq. attorney for Marine Midland bank N.A. and Vincent Tracy Esq. Attorney for Donald Summer , and due deliberation having had hereon:

NOW upon motion of Mattar D'Agostino , attorneys for Plaintiff herein, it is hereby ,

ORDERED , that the Plaintiff's motion for Summary Judgment against the Def. Marine Midland bank and M & T bank be and the same hereby is granted, and it is further

ORDERED that Def. M & T bank's cross-motion for Sum Judg. against the Def.Marine Midland is hereby granted,

ORDERED that Def. and third pty Plaintiff Marine Midl's motion for Sum Judg. against the third party Def Donald Summer , is hereby granted , and it is further

ORDERED , that a hearing on the assessment of the Plaintiff's damage as claimed in her Complaint , shall be held immediately after the conclusion of an equitable distribution hearing to be scheduled in an action pending in this Court titled Pepi S. Summer Plaintiff, v Donald Summer Defendant (Index No: H-75004), and it is further

ORDERED , that the Third -Party Defendant's motion to consolidated this action with the action pending in this Court titled Pepi S. Summer v Donald L. Summer (Index H-75004, be and the same is hereby denied.

Granted February 22, 1993

Signed Robert E. Whelan ***

Justice of The Supreme Court

*** (Justice Whelan took over for awhile, because Justice Francis had major surgery, and then was transferred to another Court)

This was the primary and last comprehensive decision in the present matter. Thereafter the serial perjurers, crooks and liars were able to bamboozle the courts, even though bias rendered some willing to be bamboozled so that they can insure the buddies would prevail .

* Mr. Trasher an officer of the bank was and is , the designated liar, and serial perjurer, who swear to documents that are false.

** Mr. Miller Esq. is an uncommon pathological liar and serial perjurer. and not one word he ever says or writes is true.

STATE OF NEW YORK SUPREME COURT
County of Erie

ACTION FOR DIVORCE

Pepi S. Summer
Plaintiff Index : H-7500

v

Donald L.Summer
Defendant

Judicial Hearing Officer the Honorable
H. Buswell Roberts Presiding

Decision Dated : February 11, 1993

The Marital Estate: Defendant 's Trust Account
Marine Midland Account No; 756-20901-3, interest bearing
Donald L. Summer Attorney at Law
Trust Account Suite 1300, Statler Towers Buffalo NY 14202

On September 3, 1986 the date of the institution of these proceedings , the balance in the account was $384.054.It is the Defendant's contention is his clients trust account, and that the deposit in and withdrawal from it consists of his clients money, including fees due him or will become due. The Plaintiff asserts that the account consists of Defendant's own funds, all earned since the date of the marriage and is therefore to be considered marital property subject to equitable distribution. I find that relevant evidence disclosed in a proceeding on April 24, 1991 , in the matter of Falk & Siemer Pet. v Donald Summer Resp. Sheldon Benatovich, Esq was questioned and responded thusly:

Q. Did Mr. Summer ever tell you that he could not pay you?
A . No . In fact he would brag to me about his assets and all the money he had in his trust account
Q. Did he ever give you a figure of what was in his trust account?
A. He told me that he had over $400.000 in his trust acct. which which were actually legal fees but he wasn't going to get the money out of there".

I find this account "Trust Account" to be marital property , subject to equitable distribution on September 3, 1986 the day this action was started , when account 756-20901-3. held $384.056

State of New York, Supreme Court: County of Erie
Judge Norman Joslin Presiding
Hearing Nov 10, 1994

Pepi Summer .Index No H-94139
Plaintiff

v

Marine Midland Bank
Manufacturers & Traders Trust Co:
Defendants

Notice of Cross motion by Marine Midland
Sworn Affidavit by Scott Miller Esq, counsel for Marine

.

Introduction :Summer had filed a motion to dismiss the claim against him by Marine falsely alleging that Plaintiff has been compensated , because the "sham trust account "was adjudicated to be part of the marital estate., and since they all falsely and perjuriously alleged that the stolen funds that had been laundered in those accounts- had remained in the accounts. The content of this motion was full of racketeering lies ,but is of no consequence as he is not a party to this proceeding.. There is also the idiocy of saying the stolen money was there , in some general pool indistinguishable from any other money. Justice Francis , who trusted what the liars told him , sought to have the stolen funds placed in a separate account under the court's supervision. Since that was not done, everything else is lies and swindle.

The affidavit sworn to by Mr. Scott Miller Esq. on behalf of MM bank is long, filed with serial perjury, shameless lies about Justice Whelan's order and completely incoherent.

Some pared statements from this perjured affidavit:

1. Marine was never a party to the matrimonial action-(why should they be.?)
2. Summer -their racketeering coconspirator always told them that this matter is subject to control of the matrimonial court (Mr.Miller is a pathological liar and incoherent, but he can read and there were two court orders by Justice Forma and Justice Whelan which are included in this App. that ordered that there be no consolidation of these matters. and that this theft matter should await the completion of the divorce first).

.

3. Knowing that the order by Justice Whelan would be attached to the pleadings for this hearing, Mr. Miller Esq. on behalf of Marine , in a fit of depraved shameless mendacity and under oath , stated that Justice Whelan ordered that Marine participate in the divorce trial.*

4. Mr.Miller Esq further goes on to take issue with Plaintiff's affidavit which asserts that :" the law of equitable distribution, which is applied in matrimonial actions , is different from common -law property rights and banking law statutes. ...

5. Mr. Miller continues over several pages of brazen lies about the courts, and the facts and the law, causing one to wonder about his mental stability.

Signed under oath by Scott Miller, Nov 2, 1994.

Manufacturers and Traders Trust Company

In the same proceeding Ms. Cheryl Storie Esq. counsel for M &T Bank , signed an affirmation under the penalty of perjury joining Defendant Marine Midland in their motion seeking the same relief.

Signed , Cheryl Storie Esq. November 8, 1994.

(M& T and counsel Ms. Storie are therefore also guilty of Marine Midland's perjury, fraud and deceit.)

*Justice Whelan appeared to be fairly strict in his expectations of the conduct of attorneys. D. Summer had lied to him regarding an order. and he immediately held him in contempt with all sorts of consequences. If he only knew the lies and frauds and misuse of his name By Marine Midland , and Mr. Miller.Esq.

Supreme Court , State of New York , County of Erie
Justice Norman E. Joslin Presiding
Hearing on the Motion , Date November 30, 1994

Pepi Summer, Plaintiff
v
Marine Midland and M&T bank, Defendants

Transcript: Relevant matters from same:
Outrageous pathological lies and deceit of the court
by Mr. Scott Miller Esq. for Marine Midland.
Lying about the orders and intent of the earlier judicial decisions*.
Mr. Kustell Esq. Petitioner's counsel had just presented the previous judicial decisions By Justice Forma, by Justice Francis, and by Justice Whelan all holding Marine Midland liable to Plaintiff, and that the damages be determined after the divorce is granted .

Mr. Miller: The point that Mr .Kustell made about liability being found by Judge Francis, there is a little side note that was overlooked by Mr. Kustell that the entry of that order was delayed , because of an issue that Judge Francis wanted decided in the matrimonial. It came back from the Appellate Division,, and Judge Whelan came in and said in an order from the Court let Marine Midland and M&T participate in the matrimonial because "yes marine and M&T it was wrong for you to take the checks with only one endorsement who is entitled to what at what point". Mr. Miller who is rambling on incoherently says that the Honorable Judge Roberts has decided this matter, which is not binding on Marine, but he would like to participate in the divorce proceedings(the divorce was granted one and one half year prior to) and if he decided than we are out of here. If not, send it back to judge Francis (by then judge Francis was in another Court in another city.) Mr. Miller also lied crazily about the issue of the first appeal in which he challenged a timeliness issue.

There is so much incoherent rambling that it is difficult to extrapolate a coherent sentence , he said it was decided, it was not decided, he does not have the orders from the other Justices, they are, or are not binding on Marine Judge Francis may have goofed,

or maybe not. There is an appeal pending but it has been withdrawn. Not one word spoken by Mr.. Miller Esq on behalf of Marine .was true other than his name. Petitioner was in the court room and was shocked at this performance. on behalf of a fiduciary federally chartered institution... She remains stunned by it. He acted schizophrenic, or suffering from some other mental illness.. Mr. Miller bamboozled the Court, which is something deviants are frequently able to do.

Ms. Cheyl Storie Esq. for Manufaturers and Traders Trust Co.:
Ms. Storie joined in Marine's serial perjury, fraud , deceit and lies and had a few lies of her own. M&T has allowed Marine Midland to carry the criminal racketeering , lies and serial perjury forward for both of them, and always joins in a "me to " defense.

The transcript indicates that the Court, Justice Joslin was more befuddled by these lying gangsters ,then judicially confident that he has made an appropriate decision. There are these long pauses and he appears to search for some .words and thoughts. The incoherent degenerates prevented him from adequately consider the facts and the law before him. This was an erroneous decision, a misscarriage of justice and a prima facie example that crooks prevail sometimes..

DECISION AND ORDER , February 7, 1995

Ordered , adjudged and decreed that the action of the Plaintiff Pepi S.Summer vs . Marine Midland bank , N.A. and M & T as well as third party claim Marine v Summer be and the same are hereby dismissed as the issue of damages was determined by the Honorable H. Buswell Roberts in the action entitled Pepi Summer vs Donald Summer due to collateral or direct estoppel and res judicata.

Signed , Norman E. Joslin , Justice of the Supreme Court.

This order based on the lies and exploitation of the judicial system , by these shameless miscreants was appealed.

State of New York Supreme Court, County of Erie
Affirmation
October 21, 1994
Pepi Summer, Plaintiff
vs
Marine Midland bank, and M & T bank ,Defendants

Nelson F. Zakia *, affirms and states under penalty of perjury that:(1) I am an attorney duly admitted to practice law in the State of NY, and a member of the firm of Birzon & Zakia P.C. My firm represented the plaintiff herein, Pepi S. Summer now Pepi Schafler in her matrimonial action against her former husband , Donald L. Summer in Supreme Ct, Erie County. I was the attorney in charge of her case and I was present throughout the matrimonial action to it's conclusion by judgment granting her a divorce from Donald L.Summer.(2) I have reviewed at the request of the attorneys for Pepi Schafler in the above entitled proceedings against MM bank and others , an affirmation by Donald Summer, dated july 23. 1994 , which I am advised has been submitted to the court in support of a motion for summary judgment, claiming that the Decision in the matrimonial in which I represented Pepi Summer disposed of the issues in the above entitled proceeding . (3) At no time were the issues in the above-entitled action, involving a claimed conversion and improper honoring of two checks made payable to Pepi Summer and Donald Summer , without the signature of Pepi Summer , ever determined by the court in the matrimonial action.(4) A pending motion to consolidate the two actions , referred to in Justice Forma's Memorandum of Decision attached to Donald Summer's affirmation was in fact denied in the granting of summary judgment to Pepi Summer in the present matter as evidenced by the last decretal paragraph:"ORDERED, that the third -party Defendant 's to consolidate this action with the action for divorce pending in this court entitle Pepi Summer Plaintiff v Donald Summer Defendant (No H-75004) be and the same is hereby denied ". (5) At no time was relief requested for Pepi Summer in her matrimonial action that would compensate her for the damages she is claiming in the above entitled action..

No such relief was ever granted in the matrimonial action as evidenced by it's absence in the judgment of the matrimonial court.(6) The matrimonial court was never placed in the position where it could determine the issues in the above entitled action, because no evidence was offered as to an analysis of these accounts in the name of Donald Summer for the period of November 7, 1985 to the date of the commencement of the action for divorce , Sept 3, 1986. Whether all or part of the converted funds were still in any of the accounts titled to Donald Summer at the commencement of the matrimonial action could not be determined by the matrimonial court without such evidence. (7) The decision by the Hon. H.B. Roberts indicated it contained the Finding of Fact and Conclusion of law " was also signed by judge Roberts and filed on March 17, 1993, and nowhere in those findings was there any determination of the issues set forth in the above noted complaint. (8) There was never any finding in the matrimonial action of Pepi Summer as to what happened to and how much was left , if any , of the $95.200 subject of the present action. (9)The law applied in Pepi Summer's action for divorce, based on concepts of marital and separate property , and equitable distribution of such property is distinguished from common law property rights and the banking law statutes .(10) Pepi Summer's claim for damages in the above entitled matter was never determined in her matrimonial action, as evidenced by the judgment , decision, and Findings of Fact and Conclusions of Law. The motion to consolidate the two actions was denied before the commencement of the divorce action, and the issues in the above entitled action were therefore not presented for determination , or determined in the matrimonial action.

Affirmed under the penalty of perjury
signed ,Nelson F. Zakia *

* Mr. Zakia is not only a very good lawyer routinely included in the annual listing of the best lawyers in America, but even more noteworthy especially in the present matter, he is a very honest honorable man that brings honor to the legal profession. The courts do not have to verify his representations to same for accuracy and veracity. He had been appointed to the State Attorneys Disciplinary Commission and is often called upon for his judgment when ethical issues confront attorneys .

APPELLATE DECISION AND STARE DECISIS

SUMMER V MARINE MIDLAND BANK

(227 AD2D 932, 643 NYS2D 256)

View This Case Only

Pepi Summer , Appellant v Marine Midland Bank N.A. et al, Respondents-Defendants

Marine Midland Bank N.A. Third Party Plaintiff -Respondent v Donald L. Summer Third party Defendantt-Respondent

Fourth Department, May 31, 1996

Appeal from order insofar as it dismissed third-party complaint unanimously dismissed and order reversed on the law without costs, motions and cross motions denied, and complaint reinstated.

OPINION OF THE COURT

Plaintiff contends that Supreme Court erred in granting the motion of third party defendant for summary judgment dismissing the complaint and third party complaint on the grounds of res judicata and collateral estoppel. Plaintiff's appeal from that portion of the court's order that dismissed the third -party complaint is dismissed because plaintiff did not amend her complaint to assert a claim against third party defendant directly and plaintiff is therefore not aggrieved .With respect to that portion of the order that dismissed the complaint , we agree with Plaintiff that the court erred.

What followed were three long paragraphs reciting the history of case , that ends with issues in the divorce case that were resolved by the NY Court of Appeals (Summer v Summer 85 NY2d 1014).

The Court then returns to the present issues:

While the appeal from the judgment of divorce was pending, third party defendant moved for summary judgment , dismissing the third party complaint in the conversion action on the grounds of res judicata and collateral estoppel . Marine and M& T opposed the motion on the ground that they were not estopped because they were not parties to the divorce action. Alternatively they cross moved that if the issues were resolved against third party def. than the complaint should be dismissed against M&M and M&T as well. The court erred in granting the motion and cross motion for summary judgment.

The doctrine of collateral estoppel "bars a party from relitigating in a subsequent proceeding an issue clearly raised in a prior proceeding and decided against that party where the party to be precluded had a full and fair opportunity to contest the prior determination ".(*Weiss v Manfredi, 83 NY2d, 974, rearg, denied 84 NY2d 848).*The issue of Plaintiff's claim for punitive damages against Marine and M&T could not be raised in the divorce action , and therefore litigation of that issue in the conversion action is not precluded (*Pietras v Gol Pak Corp. 131 AD2D 239)* Moreover the court in the divorce action determined the value of the Merrill Lynch and marine accounts utilizing valuation dates well beyond the date of the alleged conversion and, therefore the judgment of divorce does not conclusively establish the amount of plaintiff's compensatory damages for the conversion. Although plaintiff might otherwise have litigated that issue in the divorce proceeding , she was precluded from doing so by the court's determination to deny consolidation and hold a hearing on damages in the conversion action following the equitable distribution hearing in the divorce action. *Boronow v Boronow, 71 NY2d 284),*Nevertheless , we note that plaintiff is collaterally estopped by the judgment of divorce from relitigating certain issues of fact. First plaintiff failed to establish in the divorce action that the Merrill Lynch account was her separate property. *Plaintiff is therefore estopped by the court's determination that the account is marital property, Second, plaintiff is bound by the court's determination that she is entitled to 50% of the value of that account, and thus cannot rebut the presumption of Banking Law 675 that she is entitled to an equal share of that account ** Moreover to the extent that Marine and M& T can establish that any of the allegedly converted funds remained in the Marine account, as of it's valuation date in the divorce action ***, those defendants may be entitled to offset any recovery by plaintiff. 23 NY Jur 2d .

* , ** , *** See letter to counsel that while the court reinstated the claim they erred in at least 3 major areas. and set some requirements that are untenable.

From Dr.:Pepi Schafler . to Gerald Beckerman Esq.
4921 Cloister Dr. Beckerman & Beckerman
North. Bethesda Four Corners Building
Maryland 20852 Rochester NY, 14614

June 4, 1996
Dear Gerry :
Thank you again for the very good news and congratulations again on your win. You are great.! The court saw through all of marine's lies and summer's manic depressive statements, and did justice by reinstating the claim. However there are a few issues that inexplicably either did not understand, or chose to ignore.
1.* The funds that remained in the Merrill Lynch account after the almost all the money was stolen. The money was removed on November 7, 1985 and the remainder was blocked, and in the 8 years until the divorce trial the funds had grown to $51.000. During the trial Zakia could not bring up this account et al because of the order by Judge Francis and Judge Whelan. Dividing an account 50/50 as marital 8 years after the fact does not make it marital retroactively.. Judge Roberts found that the trust account at Marine was marital on September 3, 1986. Does that mean that it , was marital on Jan 1, on December 10,, 1984 , or does it mean it was marital on September 10, 1992 during the trial ? Clients had some funds in that "trust account" can I go to one of them and say: :he court held on March 17, 1993 that I have a 50% ownership in that account , therefore please hand over the $50.000 Summer's negotiated on your behalf, Summer held money for M&T bank .Should they be cooperative and hand over 50%.? I do not believe so. . What part of time and place relevance did the court not understand, or did not want to know. Some day we need to work on that.. I owned the funds in that account.
2. ** The court also erred in saying that all joint named accounts are equally owned, and the court cited NY case law re chattel The facts and the law cited might be inaccurate and is also not on point.. The Court should have cited the law on forged checks: UCC 3-419 and strict liability

When there are two names on an instrument-a check and it is negotiated with one signature only , that is called a forgery. There is no presumption of equal ownership. This is an issue of evidence. The UCC and the banking laws are clear on that.
3.*** I have been puzzled and continue to be, how one can put money in an account, co mingle it, and than say this is so and so and this is so and so. You remember that for just that reason Judge Francis, after Summer and Miller insisted the stolen funds are in the trust account , proposed a separate account with those funds in it , blocked by the court until a trial. Summer and Miller jerked him around and one or the other disagreed and nothing came of that.
In the decision the App. Div said : "that if any of the converted funds remained in the account , as of it's valuation date in the divorce action, the defendants may be entitled to offset any recovery by plaintiff" What on earth does that mean? In 8 years money came into the account and went. out. Which money was that money? And since that account was deemed marital for one day, am I entitled to all the funds that were there on that day? As soon as Marine said the funds are waiting in the trust account , Marine should have been ordered to remove it from the trust account , and place in a separate account. I have often wondered why none of the judges ever challenged Marine-Miller and Summer when they said the stolen money is in "the attorney trust account" -what is a stolen personal check doing in an professional attorney trust account.? No one did.

Now we move on with the case.
Best regards, Pepi.

After the claim was reinstated , it was followed by exploitative proceedings , frauds, lies and abuses of the Courts by Respondent Marine Midland bank and counsel Mr. Miller Esq. who appears almost dangerously disturbed.

State of New York , Supreme Court , County of Erie
Justice Norman E. Joslin Presiding.
Dated October 1, 1997

Pepi Summer , Plaintiff
v ORDER
Marine Midland Bank, NA
M & T Bank , Defendants Index No: H 94139

The Plaintiff, Pepi Summer/Schafler , by her attorneys Beckerman and Beckerman , having duly moved for a Protective Order pursuant to CPLR 3103 striking , vacating and declaring a nullity a certain notice to produce , notice to admit and notice to take deposition, all dated May 21, 1997, served on behalf of Donald Summer upon the grounds that Donald Summer is no longer a party to the pending litigation. The court then goes through all the submission by the parties. NOW, upon motion of Gerald Beckerman Esq. attorney for the Plaintiff, it is

ORDERED , that the motion for protective order is hereby in all respects Granted on the grounds that Donald Summer is no longer a party. based on the determination by the Appellate Division dated May 31 , 1996 , and said notice to admit, notice to produce, and notice to take deposition , all dated May 21, 1997 served on behalf of Donald Summer , be and the same hereby are stricken, vacated and deemed to be a nullity

Signed Norman Joslin, Justice of the Supreme Court.

This order was appealed by Marine Midland and Mr. Miller Esq.

Appeal

Supreme Court of the State of New York
Appellate Division Fourth Judicial Department
Entered April 1, 1998
Docket Nos: 3134 , and 3135

Pepi S. Summer , Plaintiff Respondent
v
Marine Midland bank, Appellant Defendant

Plaintiff Respondent having moved to dismiss the appeals taken from the orders of the Supreme Court entered in the Office of the Clerk of the County of Erie on October 7, 1997 on the grounds that the appeals are frivolous.

It is hereby Ordered that the motion be and the same is hereby granted .

Signed, Carl M. Darnall , Clerk of the Court

STATE OF NEW YORK
ORGANIZED CRIME TASK FORCE
SUBPOENA Duces Tecum

To Donald Summer , Suite 1300 Statler Towers
Buffalo , New York

You are hereby commanded all business and excuses being laid aside, to appear and attend before Ronald Goldstock , Deputy Attorney General in Charge of the Organized Crime Task Force at a private hearing to be held at
the Organized Crime Task Force , 143 Grand Street
in White Plains New York on May 12, 1989 , 10 a.m.
to testify under oath .
The subject of the investigation is " multi county organized criminal activity involving fraud.
You are required to bring with you all documents listed on the attached Schedule.

Signed Ronald Goldsctock Date May 3, 1989
Deputy Attorney General by Vija Kemanis

Documents requested : All documents related to
Nouveau Construction (the request is extensive)
Katherine Barone (Coniglio), Frank Aloi, 77 Dorset
again very extensive request.

Letter from Marine Midland legal proc. dept dated April 15, 1992
enclosed is signature card for account n/o Nouveau Constr.
c/o Katherine Barone
On the card it says : Introduced by attorney Donald Summer
there is no tax identification number provided.

Signed Lisa Pawlat
9th floor, M.M. Center

In Re Donald Summer's Suspension from the practice of law.
Report Buffalo News January 3, 1998

During the divorce trial The Hon H.B. Roberts became aware of the extensive malfeasance by Summer , with clients funds. Individuals had complained to the Bar Assoc. that Summer had pocketed their funds. The Bar Assoc. has a fund financed by member's dues that compensates persons whose funds have been converted by an attorney. The misconduct -while not at al relevant in this matter was extensive, brazen and outrageous. There had been an evidentiary proceedings by the Bar Assoc. for which Petitioner was called as a witness. The Bar Assoc. had spent $89.500 compensating victims of his fraud, and there was a $60.000 award pending to a man whose house was sold and after the closing Summer pocketed the proceeds. He died and there was an attempt to work with the estate.
There was a trial , and according to the Buffalo News of January 3, 1998, he was suspended from the practice of law for 6 months, and ordered to make restitution to the Bar Assoc. of the funds the Bar had spent up to that point to compensate victims, which amounted to $89.5000.
Reporter, Matt Gryta.

THE SORDID CRIMINAL TIES

Marine Midland Bank and Manufacturers & Traders Trust Co. had nefarious and criminal ties to Donald Summer and a woman named Katherine Gugino Barone (later Coniglio, after she married a prison guard named Coniglio), she of Nouveau Constr. fame, as well as heavy cocaine trafficking, fraud and theft convictions, and most notably numerous prostitution charges and conviction in Western NY, Toronto Canada. and Florida. Pursuant to Buffalo and other area police agencies Ms. Barone was the most notorious woman criminal in those jurisdictions. According to very persuasive evidence , in the Statler building in Buffalo NY, in which Summer had some interest *, but M&T bank held the primary interest, Ms. Barone was providing cocaine and prostitution favors to men from "the banks " that Summer had ties with. Certain people frequented the place regularly. While Summer was able to steal a lot of money from the Statler for himself, and to pay Ms. Barone it appears that Marine Midland may have arranged as payment for Summer to launder money at Marine Midland stolen elsewhere - in this instance petitioner's funds.

Buffalo News , November 1, 1987
Caption: Searches yield drugs , cash but no arrests
Among the homes searched were several homes of Ms.Barone's siblings named Gugino, and her residence at 77 Dorset in the Town of Tonawanda. Large amounts of cash and cocaine was seized, but Ronald Goldstock , director of the State Organized crime Task Force refused to provide specifics.

Statler Towers Inc, M&T Check # 577, July 10, 1984
Pay to Kathy Barone $300, endorsed by Kathy Barone
Deposited at Marine Midland Bank
Statler Towers M&T Check No 599, dated 7.17,84
Pay to Kathy Barone $300, endorsed by Kathy Barone
Deposited Marine Midland Bank.

* Summer stole a lot of money from this project between himself and a couple of cronies close to 1.000.000 dollars.

STATE OF NEW YORK SUPERIOR COURT:
COUNTY OF ERIE
Date: January 14, 1988
The People of the State of New York
against
Katherine Barone Coniglio, Anthony C. Gugino (her brother)
Thomas J Di Pasquale , Joseph P.Cannizzaro ,
Bruce G. Aiello

INDICTMENT

Ronald Goldstock , Deputy Attorney General in charge
Organized Crime Task Force.

The Grand Jury of the County of Erie , accuses the defendants Katherine Barone Coniglio..... this is a long indictment , tedious and the details not very relevant . She was charged with five counts of conspiracy, of bringing the cocaine from Florida,* of transporting it in pizza boxes, delivering it to the others and on and on. .

The Buffalo News /Tuesday , May 9 1989

Tonawanda woman gets prison term in drug case
A Town of Tonawanda housewife , Monday was ordered to serve a prison term of three years to life for her role in cocaine trafficking halted during a 1987 probe by the state's Organized Crime Task Force. State Supreme Court Justice Julian Kubiniec imposed the prison term on Katherine Barone Coniglio 34, of 77 Dorset Drive on her guilty plea to drug trafficking charges. On Friday , Kubiniec imposed identical prison terms on Mrs . Barone-Coniglio's brother Anthony C. Gugino 31.

* Donald Summer accompanied Ms. Barone on many of the cocaine "shopping trips" and they used the marital jointly purchased vacation Florida condominium for that purpose. . .

RE MARITAL PROPERTY RIGHTS AS DIFFERENTIATED FROM COMMON LAW PROPERTY RIGHTS. Checks.
Respondents HSBC USA and M&T bank have concluded that they had a right to determine these rights according to their . wishes, especially if it is convenient to cover up crimes.
The stolen and converted checks were the separate property of Petitioner on Nov 8, 1985. Everything else with Donald Summer's name on it was marital property. He had no separate property.

On January 13, 1986 two month before Petitioner knew of the conversion and theft, and 18 years before she knew of the money laundering of the stolen checks, needing money to pay household bills, especially the taxes for 83 and 84 that remained unpaid, because Summer forged her signature on the return, and claimed very minimal earning , while he traveled weekly to Florida with Ms.. Barone to bring cocaine back for sale and paid the expenses for that, Petitioner went to a branch bank and wrote two checks in her name, one with her power of attorney .for $22.000 and the other a "credit card handi check" essentially a loan check for $10.000 on her credit card.
Check with power of attorney :
Account 3: 756 -13333-9 No: 2288 , date Jan 13, 1986
Name: Dr. Pepi Summer amount $22.000
Signed Dr. Pepi Summer
Credit card handi check not numbered date Jan 13, 1986
Name Dr. Pepi Schafler amount $10.000
Signed Dr. Pepi Schafler.
Respondent HSBC USA alleged that because petitioner had used her own marital funds stored at Marine, or the loan check therefore she had been compensated. for her loss, and if Petitioner where to receive the funds due her , she would be unjustly enriched. The biased Judge NeMoyer - as crazy as it sounds agreed in that with Ms. Woodrow counsel for HSBC. To manipulate and deceive those that want to be deceived HSBC USA used the above noted checks and copies of them on the same page, which gives the impression that there were four checks on each page HSBC said Petitioner had already been unjustly enriched. This defense had been dismissed 20 years ago HSBC was estopped by a general estoppel from usisg it now. The Appellate Court appears to have wanted an excuse to retaliate against Petitioner for labeling the local crooks , as local crooks. and worse.